



Arizona State Senate *Issue Brief*

November 1, 2006

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

HOMEOWNERS' ASSOCIATIONS

INTRODUCTION

A homeowners' association (HOA) is a common interest organization to which all the owners of lots in a planned community or owners of units in a condominium must belong. The four defining characteristics of all HOAs are:

- all owners are automatically members.
- governing documents create mutual obligations.
- mandatory fees or assessments are generally levied against owners and used for the operation of the association.
- owners share a property interest in the community.

PLANNED COMMUNITY VS. CONDOMINIUM

A planned community is a real estate development that includes property owned and operated by a nonprofit corporation or unincorporated association of owners that is created pursuant to a recorded declaration for the purpose of managing, maintaining or improving the property.

A condominium refers to a real estate development in which certain portions are designated for separate ownership (units) and the remainder is designated for common ownership by the unit owners. A condominium may be created by recording a declaration in the county in which the condominium is located. Statute requires the organization of a profit, nonprofit or unincorporated unit owners' association no later than the date the first unit is conveyed.

The principal distinction between condominium and planned community HOAs involves the ownership of the common areas or elements. In a condominium, each unit owner has an undivided percentage interest in the common elements, which are defined as all portions of a condominium other than the units and frequently include the land, exterior walls, walkway areas and recreational areas. In a planned community, the common areas, which statute defines as improved or unimproved property that is intended for the use of owners of a residential subdivision or development and their invited guests, are owned by the HOA. These common areas often include land and buildings used as common areas, including an airport, but do not include golf courses.

THE HOA'S AUTHORITY

An HOA derives its power and authority from a variety of legal documents, including the HOA's governing documents and federal and state statutes and regulations.

Governing Documents

The governing documents create the legal foundation and organizational framework of an HOA. They consist of the Declaration of Covenants, Conditions and Restrictions (CC&Rs), the articles of incorporation, the bylaws, and the rules and regulations.

The CC&Rs constitute the enabling document, which is recorded with the county recorder and empowers the HOA to control certain aspects of property use within the development, often including oversight and approval authority over the construction and alteration of homes. When a person buys a home in such a development, the person receives a copy of the CC&Rs and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable contract between the HOA and the individual homeowner.

The articles of incorporation are required of incorporated HOAs and establish the HOA as a legal entity. They constitute the corporate charter and are filed with the Arizona Corporation Commission. The majority of HOAs formed since the mid-1980s are incorporated as nonprofit corporations, and therefore have articles of incorporation. Incorporation as a nonprofit provides greater statutory protection to the HOA board members, as well as to the unit or property owners, than remaining unincorporated.

The bylaws set out the procedures for the internal governance and operation of the association.

The rules and regulations often address specific matters related to the use of the property that are not specifically covered by the CC&Rs. If the rules conflict with the CC&Rs, they are generally unenforceable.

Federal Regulation

Federal law defines "HOA" primarily for tax collection purposes. The definition requires not only that the association be organized and operated for the acquisition, construction, management, maintenance and care of association property as under Arizona state law, but also that a certain percentage of gross income be derived from membership dues, fees or assessments, and that a specific percentage of expenditures cover care and maintenance of the property.

Various federal laws may affect the operation of HOAs. Examples include the Federal Bankruptcy Act and the Federal Communications Act.

State Regulation

Many aspects of HOAs are directly governed by Arizona statute, such as the Planned Communities statutes, the Arizona Condominium Act and the Nonprofit Corporations Act.

The Planned Communities statutes took effect in 1994 and constitute the first regulations pertaining specifically to the formation and operation of master planned community HOAs. Currently, these statutes address assessment increases, penalties, open meetings, disclosure of association records, resale disclosure, penalty and assessment liens, foreclosures, flag and political sign display, vehicle parking and certain affairs of the boards of directors.

Condominiums that are established beginning January 1, 1986, are regulated by the Arizona Condominium Act, which is more extensive in scope and detail than the Planned Community statutes. It deals with, among other things, the creation, alteration, management and termination of condominiums, the imposition of monetary penalties, open meetings, resale disclosure, flag display, penalty and assessment liens and foreclosures. Several exceptions allow the establishment of differing regulations within the condominium documents.

Condominiums created before 1986 are subject to the Condominium Act only to the extent that it does not conflict with the Horizontal Property Regime Act, which was in force from 1962 to 1986, and the condominium's governing documents. The HOA of any such condominium may elect to be governed by the Arizona Condominium Act by amending its documents in accordance with the established procedures.

The Nonprofit Corporations Act contains extensive provisions governing the formation and operation of nonprofit corporations, including any HOA that is incorporated as a nonprofit corporation.

Several other sections of statute, such as those pertaining to fair housing, solar energy and HOA dwelling actions, also may limit the policies that an HOA may adopt and enforce.

LEGISLATIVE ACTIVITY

In recent years, states have seen an increase in legislative activity regarding HOAs. For example, Florida formed a Homeowners' Task Force commissioned to recommend legislation, as well as a Condominium Ombudsman to assist unit owners and condominium associations. Likewise, Nevada created a Common Interest Community Ombudsman and a Commission for Common Interest Communities, which adopts regulations and conducts disciplinary hearings.

Following is a highlight of Arizona's recent legislation:

- An HOA may place a lien on a home or unit for regular assessments charged to the owner for HOA expenses and for late fees for those assessments from the time the assessment becomes due, or for fees, charges, late charges, monetary penalties or interest after the entry of a judgment in a civil suit. Statute authorizes the foreclosure of an HOA's lien for regular assessments if the owner has been delinquent in the payment of the assessment for one year or in the amount of \$1,200, excluding late fees, whichever occurs first.
- An HOA must provide a member with notice of violation of the governing documents before imposing monetary penalties. A member who receives a written notice may respond by certified mail within ten business days and may expect within ten business days a written explanation that includes certain information, such as the process to contest the notice, unless this information was provided with the original notice. Unless the process was provided previously, the HOA may not proceed with any action to enforce the documents until the allotted time passes.
- An HOA cannot prohibit the outdoor display of the American flag, any U.S. military flag, the Arizona flag, an Arizona Indian nation flag or a POW/MIA flag on a member's property, unless the display violates federal flag code. The HOA must adopt reasonable rules and regulations regarding the display of the flag.
- A planned community HOA may not prohibit the display of a political sign within a given time period before or after an election. It may regulate the size and number of signs placed on a property within specified parameters.
- A planned community HOA must allow a resident employed by a public service corporation or public safety agency to park on a street or driveway a vehicle necessary for emergency services or maintenance of electrical or water infrastructure.
- An administrative law judge has jurisdiction over disputes between HOAs and their members. An owner or HOA may petition the Department of Fire, Building and Life Safety (Department) for a hearing concerning violations of community documents or statute. The Department reviews the petition and determines whether to refer the petition to the Office of Administrative Hearings.

ADDITIONAL RESOURCES

- Planned Community Statutes: Arizona Revised Statutes, Title 33, Chapter 16
- Condominiums Statutes: Arizona Revised Statutes, Title 33, Chapter 9
- Nonprofit Corporations Statutes: Arizona Revised Statutes, Title 10, Chapter 24 through Chapter 40
- Common Areas Statutes: Arizona Revised Statutes, Title 42, Chapter 13, Article 9
- Department of Fire, Building and Life Safety
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<http://www.dfbls.az.gov/>
- Bureau for Better Community Associations and Management
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